WAYNE D. KLUMP
v.
BUREAU OF LAND MANAGEMENT

IBLA 92-65 Decided October 21, 1992

Appeal from an order of Administrative Law Judge Ramon M. Child, dismissing an appeal from a final decision of the San Simon Area Manager, Bureau of Land Management, finding unauthorized grazing and demanding payment of charges for willful trespass. AZ-040-91-8.

Affirmed.

1. Grazing and Grazing Lands--Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals--Grazing Permits and Licenses: Trespass

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

APPEARANCES: Wayne D. Klump, pro se; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Wayne D. Klump has appealed from an October 9, 1991, order of Administrative Law Judge Ramon M. Child, dismissing Klump's appeal of an April 29, 1991, final decision of the San Simon Area Manager, Bureau of Land Management (BLM). BLM's decision found that Klump had violated the regulations prohibiting unauthorized grazing of cattle on public lands and demanded payment of $712.80 for willful trespass on the Roostercomb Allotment No. 51250.

Karry K. Klump, appellant's brother, is the permittee on the Roostercomb Allotment No. 51250. On January 15, 1991, appellant filed a document, dated January 11, 1991, which stated: "I[,] Wayne Klump, hereby give Karry K. Klump complete control on/over all of my cattle that are on the Roostercomb and Steins Mountain Allotments."

By letter dated January 15, 1991, BLM advised appellant of the regulations governing subleasing and ownership and identification of livestock. BLM indicated that all livestock on an allotment had to be branded with the permittee's authorized brands, or a document had to be filed with BLM demonstrating that the permittee controlled all the livestock on the allotment which he did not own. The document authorizing control of the livestock, BLM explained, had to be signed by the livestock's owner, and had to include brands, livestock numbers, and dates the livestock would be on the allotment. BLM further noted that the document authorizing control had to be filed annually at the March 1 beginning of the grazing season. BLM stated that unauthorized livestock existed on most of appellant's allotments and informed him that if the problems were not corrected immediately, the owners of the unauthorized livestock would be in willful trespass.

On February 11, 1991, after a January 30, 1991, cattle count on the Roostercomb Allotment No. 51250, BLM issued trespass notice No. AZ-040-3-247, alleging that appellant had grazed 11 cattle on the allotment without authorization in violation of 43 CFR 4140.1(b)(1)(i). BLM demanded that the trespass cease immediately.

By letter dated February 13, 1991, appellant responded to the trespass notice, denying that he was guilty of trespass since he had given control of the cattle to Karry K. Klump, the permittee. By document dated February 17, 1991, appellant again attempted to transfer control over his cattle, stating: "I Wayne D. Klump hereby give Karry K. Klump control of all of my cattle on the Roostercomb and Steins Mountain Allotments. My brand is EU_{LR}."

In a proposed decision dated February 27, 1991, the San Simon Area Manager, BLM, concluded that all cattle on the Roostercomb Allotment No. 51250 with appellant's brand were unauthorized and would be considered in trespass. He found that appellant's January 15, 1991, letter did not meet BLM's requirements for transferring control because it did not identify the brands of the livestock, the dates the livestock would be on the allotment, and how many of each brand would be grazed on the allotment. He directed appellant to remove the cattle immediately or to provide BLM with documents meeting its requirements for leasing. The Area Manager also demanded that appellant settle the outstanding trespass notice within 15 days, noting that the trespass charges would increase until the cattle were removed or proper lease documentation was filed with BLM.

On March 11, 1991, appellant filed a protest of the proposed decision, arguing that he had complied with the law when he gave Karry K. Klump control over his cattle, and enclosing a third document transferring control over the cattle. This document, dated March 7, 1991, stated:

> I Wayne D. Klump of Bowie, Arizona[,] hereby give Karry K. Klump complete control of, on, or over all of my cattle that are on the Roostercomb and Steins Mountain Allotments. My brand, the only brand that I own[,] is EU_{LR}.

There is [sic] 125 cattle yearlong on the Roostercomb Allotment and 55 cattle yearlong on the Steins Mountain Allotment. They are all branded EU_{LR}.

Appellant demanded his full due process rights, including an evidentiary hearing. 1/

In his April 29, 1991, final decision, the Area Manager repeated that appellant's January and February 1991 letters giving control over his cattle to Karry K. Klump did not meet BLM requirements. He determined, however, that appellant's March 7, 1991, letter, which was received on March 11, 1991, did comply with BLM requirements for leasing the cattle to Karry K. Klump. The Area Manager concluded that appellant had violated 43 CFR 4140.1(b)(1)(i) by grazing his livestock on the Roostercomb Allotment No. 51250 without a permit, lease, or other grazing authorization from January 30 to March 11, 1991. He demanded that appellant settle the outstanding trespass notice by paying willful trespass charges of $712.80 within 30 days. 2/

Appellant appealed BLM's final decision to an Administrative Law Judge. He reiterated the arguments raised in his protest and additionally asserted that BLM possessed letters in his file from the Arizona Livestock Board showing that his brother had control of his cattle.

BLM responded by filing a motion to dismiss the appeal, to which appellant did not reply.

In his order dismissing the proceeding, Judge Child concluded that BLM's final decision was well reasoned, and the appeal raised no issues requiring a hearing. He further determined that appellant had not met the requirements of 43 CFR 4.470, and that the appeal was without merit.

In his "Notice of Protest, Appeal, and Statement of Reasons" (SOR), appellant argues that he tried in good faith to comply with the law in every respect. He contends that his January 1991 letter was a sufficient control document since he only owns one brand and all of his cattle on the Roostercomb Allotment No. 51250 were marked with that brand. He asserts that BLM did not tell him that this letter did not meet its requirements for transferring control over the cattle. Appellant further claims that his filing of a brand lease with the Arizona Livestock Board, a copy of which was also on file with BLM, satisfied State law as well as BLM

1/ Appellant also asserted that BLM's actions constituted harassment, that various BLM personnel had lost all impartiality and should be removed, that he had various water and property rights which the Government was attempting to take away, and that he had recorded a valid claim to various lands in Cochise County, Arizona.

2/ The Area Manager also responded to the other issues raised in appellant's protest.

regulations. He repeats his demand for full due process, including an evidentiary hearing. 3/

In its answer, 4/ BLM argues that the record 5/ demonstrates that appellant failed to comply with the applicable regulations for transfer
of control of his cattle until BLM received his March 7, 1991, letter on March 11, 1991. BLM contends that the regulations require that the permittee on the Roostercomb Allotment No. 51250, Karry K. Klump, own or control the cattle which graze on that allotment. BLM avers that despite substantial notice as to the procedures for transferring control of the cattle to the permittee, appellant continued to graze his cattle on the allotment from January 30 until March 11, 1991, without filing the proper documentation. BLM disputes appellant's statement that it failed to
inform him that the earlier control documents did not meet BLM requirements, asserting that a February 28, 1991, BLM letter to Karry K. Klump
and BLM's final decision adequately notified appellant of the control documents' deficiencies. BLM further maintains that appellant's State
brand lease also did not satisfy BLM criteria. 6/

Appellant has responded to BLM's answer, reiterating that he was never in trespass and that his State brand lease document and his January and February 1991 letters adequately transferred control over his cattle to Karry K. Klump. BLM has replied, repeating the arguments addressed in its answer.

As an initial matter, we reject appellant's claim that he has been denied due process. Due process does not require notice and a prior opportunity to be heard in all cases in which there is an alleged impairment of property rights as long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final. Appeal to the Board of Land Appeals satisfies the due process requirements. Davis Exploration,

3/ Appellant also renews his charges of harassment and lack of impartiality by BLM employees, and adds a claim of conflict of interest by BLM, its counsel, and Judge Child. We find these unsupported allegations without merit and reject them. The other issues raised by appellant, including his insistence that the Government wants to deprive him of his claimed water and other property rights, exceed the jurisdiction of this Board.

4/ Although in a response to BLM's answer, appellant contends that BLM's answer was untimely, we find that BLM filed its answer within the time period established by 43 CFR 4.414.

5/ The case file forwarded to the Board by BLM lacked several significant documents referred to in BLM's final decision. Appellant submitted some of the missing documents with his appeal submissions; the remainder were filed by BLM in response to the Board's July 9, 1992, order directing supplementation of the record. BLM is reminded that it must transmit the complete, original administrative record when it conveys an appeal to this Board.

6/ Although BLM has requested that this appeal be summarily dismissed,
we find that appellant's SOR adequately addresses alleged errors in the appealed decision, and deny that request.

112 IBLA 254, 260 (1989); Santa Fe Pacific Railroad Co., 90 IBLA 200, 220 (1986).

[1] Implementation of the Taylor Grazing Act of June 24, 1934, as amended, 43 U.S.C. §§ 315, 315a-315r (1988), is committed to the discretion of the Secretary of the Interior. Yardley v. BLM, 123 IBLA 80, 89 (1992), and cases cited therein. Section 2 of the Taylor Grazing Act charges the Secretary, with respect to grazing districts on public lands,
to "make such rules and regulations" and to "do any and all things necessary * * * to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, [and] to provide for the orderly use, improvement, and development of the range * * *." 43 U.S.C. § 315a (1988). The provisions of the Federal Land Policy and Management Act of 1976 amending the Taylor Grazing Act reiterate the Federal commitment
to the protection and improvement of Federal rangelands. See 43 U.S.C. §§ 1751-1753 (1988).

BLM, as the Secretary's delegate, enjoys broad discretion in determining how to manage and adjudicate grazing preference. Yardley v. BLM, 123 IBLA at 90. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 CFR Part 4100. 43 CFR 4.478(b). When BLM adjudicates grazing privileges in the exercise of its administrative discretion, that action may be regarded as arbitrary, capricious,
or inequitable only where it is not supportable on any rational basis. The burden is on the objecting party to demonstrate that a decision is improper. Yardley v. BLM, 123 IBLA at 90; Glanville Farms, Inc. v. BLM, 122 IBLA 77, 87 (1992); Fasselin v. BLM, 102 IBLA 9, 14 (1988).

We find that appellant has not demonstrated error in BLM's determination that he grazed his cattle on the Roostercomb Allotment No. 51250 without a permit, lease, or other grazing use authorization in violation
of 43 CFR 4140.1(b)(1)(i). Appellant does not dispute that Karry K. Klump is the permittee on the allotment, or that appellant's cattle grazed on the allotment between January 30 and March 11, 1991. The provisions of 43 CFR 4130.5(d) and (e) require, respectively, that if a permittee does not own the livestock grazing on public lands, the agreement giving the permittee control of the livestock must be filed with the authorized officer, and that the brand on the controlled livestock must also be filed with BLM. BLM's January 15, 1991, letter to appellant directed that the document authorizing control to the permittee also include the number of livestock and the dates the livestock would be on the allotment.

Appellant's January and February 1991 letters and the State brand lease, whether viewed individually or collectively, do not contain all of the required information. For example, none of those documents indicates the number of controlled livestock to be grazed on the allotment. Appellant's March 7, 1991, letter, does specify the number of cattle (125) on
the allotment, and BLM properly concluded that this letter satisfied the criteria for a document authorizing control to the permittee. Accordingly, we uphold BLM's finding that appellant grazed his cattle on the Roostercomb

Allotment No. 51250 without authorization from January 30 through March 11, 1991, and affirm Judge Child's October 9, 1991, order.

To the extent not specifically addressed herein, appellant's arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge